

FIRST REGULAR SESSION

# SENATE BILL NO. 122

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHAEFER.

Pre-filed January 8, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, and 610.100, RSMo, and to enact in lieu thereof seven new sections relating to public records and meetings, with existing penalty provisions and an emergency clause for a certain section.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, 2 and 610.100, RSMo, are repealed and seven new sections enacted in lieu thereof, 3 to be known as sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, and 4 610.100, to read as follows:

610.010. As used in this chapter, unless the context otherwise indicates, 2 the following terms mean:

3 (1) "Closed meeting", "closed record", or "closed vote", any meeting, record 4 or vote closed to the public;

5 (2) "Copying", if requested by a member of the public, copies provided as 6 detailed in section 610.026, if duplication equipment is available;

7 (3) "Public business", all matters which relate in any way to the 8 performance of the public governmental body's functions or the conduct of its 9 business;

10 (4) "Public governmental body", any legislative, administrative or 11 governmental entity created by the constitution or statutes of this state, by order 12 or ordinance of any political subdivision or district, judicial entities when 13 operating in an administrative capacity, or by executive order, including:

14 (a) Any body, agency, board, bureau, council, commission, committee, 15 board of regents or board of curators or any other governing body of any

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 institution of higher education, including a community college, which is supported  
17 in whole or in part from state funds, including but not limited to the  
18 administrative entity known as "The Curators of the University of Missouri" as  
19 established by section 172.020;

20 (b) Any advisory committee or commission appointed by the governor by  
21 executive order;

22 (c) Any department or division of the state, of any political subdivision of  
23 the state, of any county or of any municipal government, school district or special  
24 purpose district including but not limited to sewer districts, water districts, and  
25 other subdistricts of any political subdivision;

26 (d) Any other legislative or administrative governmental deliberative body  
27 under the direction of three or more elected or appointed members having  
28 rulemaking or quasi-judicial power;

29 (e) Any committee appointed by or at the direction of any of the entities  
30 and which is authorized to report to any of the above-named entities, any  
31 advisory committee appointed by or at the direction of any of the named entities  
32 for the specific purpose of recommending, directly to the public governmental  
33 body's governing board or its chief administrative officer, policy or policy revisions  
34 or expenditures of public funds including, but not limited to, entities created to  
35 advise bi-state taxing districts regarding the expenditure of public funds, or any  
36 policy advisory body, policy advisory committee or policy advisory group  
37 appointed by a president, chancellor or chief executive officer of any college or  
38 university system or individual institution at the direction of the governing body  
39 of such institution which is supported in whole or in part with state funds for the  
40 specific purpose of recommending directly to the public governmental body's  
41 governing board or the president, chancellor or chief executive officer policy,  
42 policy revisions or expenditures of public funds provided, however, the staff of the  
43 college or university president, chancellor or chief executive officer shall not  
44 constitute such a policy advisory committee. The custodian of the records of any  
45 public governmental body shall maintain a list of the policy advisory committees  
46 described in this subdivision;

47 (f) Any quasi-public governmental body. The term "quasi-public  
48 governmental body" means any person, corporation or partnership organized or  
49 authorized to do business in this state pursuant to the provisions of chapter 352,  
50 353, or 355, or unincorporated association which either:

51 a. Has as its primary purpose to enter into contracts with public

52 governmental bodies, or to engage primarily in activities carried out pursuant to  
53 an agreement or agreements with public governmental bodies; or

54       b. Performs a public function as evidenced by a statutorily based capacity  
55 to confer or otherwise advance, through approval, recommendation or other  
56 means, the allocation or issuance of tax credits, tax abatement, public debt,  
57 tax-exempt debt, rights of eminent domain, or the contracting of leaseback  
58 agreements on structures whose annualized payments commit public tax  
59 revenues; or any association that directly accepts the appropriation of money from  
60 a public governmental body, but only to the extent that a meeting, record, or vote  
61 relates to such appropriation; and

62       (g) Any bi-state development agency established pursuant to section  
63 70.370;

64       (5) "Public meeting", any meeting of a public governmental body subject  
65 to sections 610.010 to 610.030 at which any public business is discussed, decided,  
66 or public policy formulated, whether such meeting is conducted in person or by  
67 means of communication equipment, including, but not limited to, conference call,  
68 video conference, Internet chat, or Internet message board. The term "public  
69 meeting" shall not include an informal gathering of members of a public  
70 governmental body for ministerial or social purposes when there is no intent to  
71 avoid the purposes of this chapter, but the term shall include a public vote of all  
72 or a majority of the members of a public governmental body, by electronic  
73 communication or any other means, conducted in lieu of holding a public meeting  
74 with the members of the public governmental body gathered at one location in  
75 order to conduct public business;

76       (6) "Public record", any record, whether written or electronically stored,  
77 retained by or of any public governmental body including any report, survey,  
78 memorandum, or other document or study prepared for the public governmental  
79 body by a consultant or other professional service paid for in whole or in part by  
80 public funds, including records created or maintained by private contractors  
81 under an agreement with a public governmental body or on behalf of a public  
82 governmental body; provided, however, that personally identifiable student  
83 records maintained by public educational institutions shall be open for inspection  
84 by the parents, guardian or other custodian of students under the age of eighteen  
85 years and by the parents, guardian or other custodian and the student if the  
86 student is over the age of eighteen years. The term "public record" shall not  
87 include any internal memorandum or letter received or prepared by or on behalf

88 of a member of a public governmental body consisting of advice, opinions and  
89 recommendations in connection with the deliberative decision-making process of  
90 said body, unless such records are retained by the public governmental body or  
91 presented at a public meeting. Any document or study prepared for a public  
92 governmental body by a consultant or other professional service as described in  
93 this subdivision shall be retained by the public governmental body in the same  
94 manner as any other public record. **Any lease, sublease, rental agreement,**  
95 **or similar instrument entered into by any public governmental body,**  
96 **or any sublease of a publicly-owned facility entered into between any**  
97 **party and the entity which shall have the rights to manage said facility,**  
98 **or any other agreement for the rental, construction, or renovation of**  
99 **said facility shall be a public record;**

100 (7) "Public vote", any vote, whether conducted in person, by telephone, or  
101 by any other electronic means, cast at any public meeting of any public  
102 governmental body.

610.020. 1. All public governmental bodies shall give notice of the time,  
2 date, and place of each meeting, and its tentative agenda, in a manner reasonably  
3 calculated to advise the public of the matters to be considered, and if the meeting  
4 will be conducted by telephone or other electronic means, the notice of the  
5 meeting shall identify the mode by which the meeting will be conducted and the  
6 designated location where the public may observe and attend the meeting. If a  
7 public body plans to meet by Internet chat, Internet message board, or other  
8 computer link, it shall post a notice of the meeting on its website in addition to  
9 its principal office and shall notify the public how to access that  
10 meeting. Reasonable notice shall include making available copies of the notice  
11 to any **member of the public or** representative of the news media who requests  
12 notice of meetings of a particular public governmental body concurrent with the  
13 notice being made available to the members of the particular governmental body  
14 and posting the notice on a bulletin board or other prominent place which is  
15 easily accessible to the public and clearly designated for that purpose at the  
16 principal office of the body holding the meeting, or if no such office exists, at the  
17 building in which the meeting is to be held.

18 2. Notice conforming with all of the requirements of subsection 1 of this  
19 section shall be given at least [twenty-four] **forty-eight hours, or twenty-four**  
20 **hours for the general assembly and any committee thereof,** exclusive of  
21 weekends and holidays when the facility is closed, prior to the commencement of

22 any meeting of a governmental body unless for good cause such notice is  
23 impossible or impractical, in which case as much notice as is reasonably possible  
24 shall be given. Each meeting shall be held at a place reasonably accessible to the  
25 public and of sufficient size to accommodate the anticipated attendance by  
26 members of the public, and at a time reasonably convenient to the public, unless  
27 for good cause such a place or time is impossible or impractical. Every reasonable  
28 effort shall be made to grant special access to the meeting to handicapped or  
29 disabled individuals.

30 3. A public body shall allow for the recording by audiotape, videotape, or  
31 other electronic means of any open meeting. A public body may establish  
32 guidelines regarding the manner in which such recording is conducted so as to  
33 minimize disruption to the meeting. No audio recording of any meeting, record,  
34 or vote closed pursuant to the provisions of section 610.021 shall be permitted  
35 without permission of the public body; any person who violates this provision  
36 shall be guilty of a class C misdemeanor.

37 4. When it is necessary **for such governmental bodies** to hold a  
38 meeting on less than [twenty-four] **forty-eight** hours' notice, **or twenty-four**  
39 **hours' notice for the general assembly and any committee thereof**, or at  
40 a place that is not reasonably accessible to the public, or at a time that is not  
41 reasonably convenient to the public, the nature of the good cause justifying that  
42 departure from the normal requirements shall be stated in the minutes.

43 5. A formally constituted subunit of a parent governmental body may  
44 conduct a meeting without notice as required by this section during a lawful  
45 meeting of the parent governmental body, a recess in that meeting, or  
46 immediately following that meeting, if the meeting of the subunit is publicly  
47 announced at the parent meeting and the subject of the meeting reasonably  
48 coincides with the subjects discussed or acted upon by the parent governmental  
49 body.

50 6. If another provision of law requires a manner of giving specific notice  
51 of a meeting, hearing or an intent to take action by a governmental body,  
52 compliance with that section shall constitute compliance with the notice  
53 requirements of this section.

54 7. A journal or minutes of open and closed meetings shall be taken and  
55 retained by the public governmental body, including, but not limited to, a record  
56 of any votes taken at such meeting. The minutes shall include, **but not be**  
57 **limited to**, the date, time, place, members present, members absent, and a

58 record of any votes taken. When a roll call vote is taken, the minutes shall  
59 attribute each "yea" and "nay" vote or abstinence if not voting to the name of the  
60 individual member of the public governmental body. **Minutes shall reflect a**  
61 **summary of the discussions occurring during any closed meeting, but**  
62 **nothing in this subsection shall require the disclosure of records or**  
63 **votes that are properly closed under section 610.021.**

610.021. Except to the extent disclosure is otherwise required by law, a  
2 public governmental body is authorized to close meetings, records and votes, to  
3 the extent they relate to the following:

4 (1) Legal actions, causes of action or litigation involving a public  
5 governmental body and any confidential or privileged communications between  
6 a public governmental body or its representatives and its attorneys. However,  
7 any minutes, vote or settlement agreement relating to legal actions, causes of  
8 action or litigation involving a public governmental body or any agent or entity  
9 representing its interests or acting on its behalf or with its authority, including  
10 any insurance company acting on behalf of a public government body as its  
11 insured, shall be ~~[made public]~~ **publicly disclosed in an open meeting** upon  
12 final disposition of the matter voted upon or upon the signing by the parties of  
13 the settlement agreement, unless, prior to final disposition, the settlement  
14 agreement is ordered closed by a court after a written finding that the adverse  
15 impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy  
16 considerations of section 610.011, however, the amount of any moneys paid by, or  
17 on behalf of, the public governmental body shall be disclosed; provided, however,  
18 in matters involving the exercise of the power of eminent domain, the vote shall  
19 be ~~[announced or become public]~~ **publicly disclosed in an open meeting**  
20 immediately following the action on the motion to authorize institution of such  
21 a legal action. Legal work product shall be considered a closed record. **When**  
22 **public disclosure in an open meeting is prescribed, such disclosure**  
23 **shall be done orally or in writing, or both, and shall occur at the next**  
24 **scheduled open meeting of the public body, or at the resumption of a**  
25 **recessed or subsequent open meeting, whatever is applicable soonest**  
26 **to the time lines for disclosure as prescribed in this section. Where the**  
27 **public governmental body shall close meetings, records, and votes due**  
28 **to a "cause of action" as provided in this subdivision, the body shall**  
29 **have received evidence that a lawsuit has been filed, although not yet**  
30 **served, or shall have actual correspondence from a party stating that**

31 **litigation shall be filed under certain circumstances stated in said**  
32 **correspondence;**

33 (2) Leasing, purchase or sale of real estate by a public governmental body  
34 where public knowledge of the transaction might adversely affect the legal  
35 consideration therefor. However, any minutes, vote or public record approving  
36 a contract relating to the leasing, purchase or sale of real estate by a public  
37 governmental body shall be made public upon execution of the lease, purchase or  
38 sale of the real estate;

39 (3) Hiring, firing, disciplining or promoting of particular employees by a  
40 public governmental body when personal information about the employee is  
41 discussed or recorded. However, any vote on a final decision, when taken by a  
42 public governmental body, to hire, fire, promote or discipline an employee of a  
43 public governmental body shall be made available with a record of how each  
44 member voted to the public within seventy-two hours of the close of the meeting  
45 where such action occurs; provided, however, that any employee so affected shall  
46 be entitled to prompt notice of such decision during the seventy-two-hour period  
47 before such decision is made available to the public.

48 As used in this subdivision, the term "personal information" means information  
49 relating to the performance or merit of individual employees;

50 (4) The state militia or national guard or any part thereof;

51 (5) Nonjudicial mental or physical health proceedings involving  
52 identifiable persons, including medical, psychiatric, psychological, or alcoholism  
53 or drug dependency diagnosis or treatment;

54 (6) Scholastic probation, expulsion, or graduation of identifiable  
55 individuals, including records of individual test or examination scores; however,  
56 personally identifiable student records maintained by public educational  
57 institutions shall be open for inspection by the parents, guardian or other  
58 custodian of students under the age of eighteen years and by the parents,  
59 guardian or other custodian and the student if the student is over the age of  
60 eighteen years;

61 (7) Testing and examination materials, before the test or examination is  
62 given or, if it is to be given again, before so given again;

63 (8) Welfare cases of identifiable individuals;

64 (9) Preparation, including any discussions or work product, on behalf of  
65 a public governmental body or its representatives for negotiations with employee  
66 groups;

67 (10) Software codes for electronic data processing and documentation  
68 thereof;

69 (11) Specifications for competitive bidding, until either the specifications  
70 are officially approved by the public governmental body or the specifications are  
71 published for bid;

72 (12) Sealed bids and related documents, until the bids are opened; and  
73 sealed proposals and related documents or any documents related to a negotiated  
74 contract until a contract is executed, or all proposals are rejected;

75 (13) Individually identifiable personnel records, performance ratings or  
76 records pertaining to employees or applicants for employment, except that this  
77 exemption shall not apply to the names, positions, salaries and lengths of service  
78 of officers and employees of public agencies once they are employed as such, and  
79 the names of private sources donating or contributing money to the salary of a  
80 chancellor or president at all public colleges and universities in the state of  
81 Missouri and the amount of money contributed by the source;

82 (14) Records which are protected from disclosure by law;

83 (15) Meetings and public records relating to scientific and technological  
84 innovations in which the owner has a proprietary interest;

85 (16) Records relating to municipal hotlines established for the reporting  
86 of abuse and wrongdoing;

87 (17) Confidential or privileged communications between a public  
88 governmental body and its auditor, including all auditor work product; however,  
89 all final audit reports issued by the auditor are to be considered open records  
90 pursuant to this chapter;

91 (18) Operational guidelines and policies developed, adopted, or maintained  
92 by any public agency responsible for law enforcement, public safety, first  
93 response, or public health for use in responding to or preventing any critical  
94 incident which is or appears to be terrorist in nature and which has the potential  
95 to endanger individual or public safety or health.

96 Nothing in this exception shall be deemed to close information regarding  
97 expenditures, purchases, or contracts made by an agency in implementing these  
98 guidelines or policies. When seeking to close information pursuant to this  
99 exception, the agency shall affirmatively state in writing that disclosure would  
100 impair its ability to protect the safety or health of persons, and shall in the same  
101 writing state that the public interest in nondisclosure outweighs the public  
102 interest in disclosure of the records. This exception shall sunset on December 31,



103 [2012] **2017**;

104 (19) Existing or proposed security systems and structural plans of real  
105 property owned or leased by a public governmental body, and information that is  
106 voluntarily submitted by a nonpublic entity owning or operating an infrastructure  
107 to any public governmental body for use by that body to devise plans for  
108 protection of that infrastructure, the public disclosure of which would threaten  
109 public safety:

110 (a) Records related to the procurement of or expenditures relating to  
111 security systems purchased with public funds shall be open;

112 (b) When seeking to close information pursuant to this exception, the  
113 public governmental body shall affirmatively state in writing that disclosure  
114 would impair the public governmental body's ability to protect the security or  
115 safety of persons or real property, and shall in the same writing state that the  
116 public interest in nondisclosure outweighs the public interest in disclosure of the  
117 records;

118 (c) Records that are voluntarily submitted by a nonpublic entity shall be  
119 reviewed by the receiving agency within ninety days of submission to determine  
120 if retention of the document is necessary in furtherance of a state security  
121 interest. If retention is not necessary, the documents shall be returned to the  
122 nonpublic governmental body or destroyed;

123 (d) This exception shall sunset on December 31, [2012] **2017**;

124 (20) Records that identify the configuration of components or the  
125 operation of a computer, computer system, computer network, or  
126 telecommunications network, and would allow unauthorized access to or unlawful  
127 disruption of a computer, computer system, computer network, or  
128 telecommunications network of a public governmental body. This exception shall  
129 not be used to limit or deny access to otherwise public records in a file, document,  
130 data file or database containing public records. Records related to the  
131 procurement of or expenditures relating to such computer, computer system,  
132 computer network, or telecommunications network, including the amount of  
133 moneys paid by, or on behalf of, a public governmental body for such computer,  
134 computer system, computer network, or telecommunications network shall be  
135 open;

136 (21) Credit card numbers, personal identification numbers, digital  
137 certificates, physical and virtual keys, access codes or authorization codes that  
138 are used to protect the security of electronic transactions between a public

139 governmental body and a person or entity doing business with a public  
140 governmental body. Nothing in this section shall be deemed to close the record  
141 of a person or entity using a credit card held in the name of a public  
142 governmental body or any record of a transaction made by a person using a credit  
143 card or other method of payment for which reimbursement is made by a public  
144 governmental body; and

145 (22) Records submitted by an individual, corporation, or other business  
146 entity to a public institution of higher education in connection with a proposal to  
147 license intellectual property or perform sponsored research and which contains  
148 sales projections or other business plan information the disclosure of which may  
149 endanger the competitiveness of a business.

610.022. 1. Except as set forth in subsection 2 of this section, no meeting  
2 or vote may be closed without an affirmative public vote of the majority of a  
3 quorum of the public governmental body. The vote of each member of the public  
4 governmental body on the question of closing a public meeting or vote and the  
5 specific reason for closing that public meeting or vote by reference to a specific  
6 section of this chapter shall be announced publicly at an open meeting of the  
7 governmental body and entered into the minutes.

8 2. A public governmental body proposing to hold a closed meeting or vote  
9 shall give notice of the time, date and place of such closed meeting or vote and  
10 the reason for holding it by reference to the specific exception allowed pursuant  
11 to the provisions of section 610.021. Such notice shall comply with the procedures  
12 set forth in section 610.020 for notice of a public meeting.

13 3. Any meeting or vote closed pursuant to section 610.021 shall be closed  
14 only to the extent necessary for the specific reason announced to justify the closed  
15 meeting or vote. Public governmental bodies shall not discuss any business in a  
16 closed meeting, record or vote which does not directly relate to the specific reason  
17 announced to justify the closed meeting or vote. **Only members of a public**  
18 **governmental body, their attorney and staff assistants, and any other**  
19 **person necessary to provide information needed by or requested by the**  
20 **public governmental body in regard to the matter being discussed shall**  
21 **be permitted in a closed meeting.** Public governmental bodies holding a  
22 closed meeting shall close only an existing portion of the meeting facility  
23 necessary to house the members of the public governmental body in the closed  
24 session, allowing members of the public to remain to attend any subsequent open  
25 session held by the public governmental body following the closed session.

26           4. Nothing in sections 610.010 to 610.028 shall be construed as to require  
27 a public governmental body to hold a closed meeting, record or vote to discuss or  
28 act upon any matter.

29           5. Public records shall be presumed to be open unless otherwise exempt  
30 pursuant to the provisions of this chapter.

31           6. In the event any member of a public governmental body makes a  
32 motion to close a meeting, or a record, or a vote from the public and any other  
33 member believes that such motion, if passed, would cause a meeting, record or  
34 vote to be closed from the public in violation of any provision in this chapter, such  
35 latter member shall state his or her objection to the motion at or before the time  
36 the vote is taken on the motion. The public governmental body shall enter in the  
37 minutes of the public governmental body any objection made pursuant to this  
38 subsection. Any member making such an objection shall be allowed to fully  
39 participate in any meeting, record or vote that is closed from the public over the  
40 member's objection. In the event the objecting member also voted in opposition  
41 to the motion to close the meeting, record or vote at issue, the objection and vote  
42 of the member as entered in the minutes shall be an absolute defense to any  
43 claim filed against the objecting member pursuant to section 610.027.

          610.023. 1. Each public governmental body is to appoint a custodian who  
2 is to be responsible for the maintenance of that body's records. The identity and  
3 location of a public governmental body's custodian is to be made available upon  
4 request. **Each custodian of a public governmental body is encouraged**  
5 **to create and maintain an index of all public records maintained by its**  
6 **public governmental body.**

7           2. Each public governmental body shall make available for inspection and  
8 copying by the public of that body's public records. No person shall remove  
9 original public records from the office of a public governmental body or its  
10 custodian without written permission of the designated custodian. No public  
11 governmental body shall, after August 28, 1998, grant to any person or entity,  
12 whether by contract, license or otherwise, the exclusive right to access and  
13 disseminate any public record unless the granting of such right is necessary to  
14 facilitate coordination with, or uniformity among, industry regulators having  
15 similar authority.

16           3. Each request for access to a public record shall be acted upon as soon  
17 as possible, but in no event later than the end of the third business day following  
18 the date the request is received by the custodian of records of a public

19 governmental body. If records are requested in a certain format, the public body  
20 shall provide the records in the requested format, if such format is available. If  
21 access to the public record is not granted immediately, the custodian shall give  
22 a detailed explanation of the cause for further delay and the place and earliest  
23 time and date that the record will be available for inspection. This period for  
24 document production may exceed three days for reasonable cause.

25 4. If a request for access is denied, the custodian shall provide, upon  
26 request, a written statement of the grounds for such denial. Such statement shall  
27 cite the specific provision of law under which access is denied and shall be  
28 furnished to the requester no later than the end of the third business day  
29 following the date that the request for the statement is received.

610.027. 1. The remedies provided by this section against public  
2 governmental bodies shall be in addition to those provided by any other provision  
3 of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney  
4 general or prosecuting attorney, may seek judicial enforcement of the  
5 requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to  
6 610.026 shall be brought in the circuit court for the county in which the public  
7 governmental body has its principal place of business. Upon service of a  
8 summons, petition, complaint, counterclaim, or cross-claim in a civil action  
9 brought to enforce the provisions of sections 610.010 to 610.026, the custodian of  
10 the public record that is the subject matter of such civil action shall not transfer  
11 custody, alter, destroy, or otherwise dispose of the public record sought to be  
12 inspected and examined, notwithstanding the applicability of an exemption  
13 pursuant to section 610.021 or the assertion that the requested record is not a  
14 public record until the court directs otherwise.

15 2. [Once a party seeking judicial enforcement of sections 610.010 to  
16 610.026 demonstrates to the court that the body in question is subject to the  
17 requirements of sections 610.010 to 610.026 and has held a closed meeting, record  
18 or vote, the burden of persuasion shall be on the body and its members to  
19 demonstrate compliance with the requirements of sections 610.010 to 610.026.]  
20 **In any legal proceeding, there shall be a presumption that a meeting,**  
21 **record, or vote is open to the public. The burden shall be on a public**  
22 **governmental body or a member of a public governmental body to**  
23 **prove that such meeting, record, or vote may be closed to the public.**

24 3. Upon a finding by a preponderance of the evidence that a public  
25 governmental body or a member of a public governmental body has [knowingly]

26 violated sections 610.010 to 610.026, the public governmental body or the member  
27 shall be subject to a civil penalty in an amount [up to one thousand] **of one**  
28 **hundred** dollars. If the court finds that there is a [knowing] violation of sections  
29 610.010 to 610.026, the court [may] **shall** order the payment by such body or  
30 member of all costs and reasonable attorney fees to any party successfully  
31 establishing a violation. [The court shall determine the amount of the penalty  
32 by taking into account the size of the jurisdiction, the seriousness of the offense,  
33 and whether the public governmental body or member of a public governmental  
34 body has violated sections 610.010 to 610.026 previously.]

35 4. Upon a finding by a preponderance of the evidence that a public  
36 governmental body or a member of a public governmental body has purposely  
37 violated sections 610.010 to 610.026, the public governmental body or the member  
38 shall be subject to a civil penalty in an amount up to five thousand dollars. If the  
39 court finds that there was a purposeful violation of sections 610.010 to 610.026,  
40 then the court shall order the payment by such body or member of all costs and  
41 reasonable attorney fees to any party successfully establishing such a  
42 violation. The court shall determine the amount of the penalty by taking into  
43 account the size of the jurisdiction, the seriousness of the offense, and whether  
44 the public governmental body or member of a public governmental body has  
45 violated sections 610.010 to 610.026 previously.

46 5. Upon a finding by a preponderance of the evidence that a public  
47 governmental body has violated any provision of sections 610.010 to 610.026, a  
48 court shall void any action taken in violation of sections 610.010 to 610.026, if the  
49 court finds under the facts of the particular case that the public interest in the  
50 enforcement of the policy of sections 610.010 to 610.026 outweighs the public  
51 interest in sustaining the validity of the action taken in the [closed] meeting,  
52 record or vote. Suit for enforcement shall be brought within one year from which  
53 the violation is ascertainable and in no event shall it be brought later than two  
54 years after the violation. This subsection shall not apply to an action taken  
55 regarding the issuance of bonds or other evidence of indebtedness of a public  
56 governmental body if a public hearing, election or public sale has been held  
57 regarding the bonds or evidence of indebtedness.

58 6. A public governmental body which is in doubt about the legality of  
59 closing a particular meeting, record or vote may bring suit at the expense of that  
60 public governmental body in the circuit court of the county of the public  
61 governmental body's principal place of business to ascertain the propriety of any

62 such action[, or seek a formal opinion of the attorney general or an attorney for  
63 the governmental body].

610.100. 1. As used in sections 610.100 to 610.150, the following words  
2 and phrases shall mean:

3 (1) "Arrest", an actual restraint of the person of the defendant, or by his  
4 or her submission to the custody of the officer, under authority of a warrant or  
5 otherwise for a criminal violation which results in the issuance of a summons or  
6 the person being booked;

7 (2) "Arrest report", a record of a law enforcement agency of an arrest and  
8 of any detention or confinement incident thereto together with the charge  
9 therefor;

10 (3) "Inactive", an investigation in which no further action will be taken  
11 by a law enforcement agency or officer for any of the following reasons:

12 (a) A decision by the law enforcement agency not to pursue the case;

13 (b) Expiration of the time to file criminal charges pursuant to the  
14 applicable statute of limitations, or ten years after the commission of the offense;  
15 whichever date earliest occurs;

16 (c) Finality of the convictions of all persons convicted on the basis of the  
17 information contained in the investigative report, by exhaustion of or expiration  
18 of all rights of appeal of such persons;

19 (4) "Incident report", a record of a law enforcement agency consisting of  
20 the date, time, specific location, name of the victim and immediate facts and  
21 circumstances surrounding the initial report of a crime or incident, including any  
22 logs of reported crimes, accidents and complaints maintained by that agency;

23 (5) "Investigative report", a record, other than an arrest or incident report,  
24 prepared by personnel of a law enforcement agency, inquiring into a crime or  
25 suspected crime, either in response to an incident report or in response to  
26 evidence developed by law enforcement officers in the course of their duties.

27 2. Each law enforcement agency of this state, of any county, and of any  
28 municipality shall maintain records of all incidents reported to the agency,  
29 investigations and arrests made by such law enforcement agency. All incident  
30 reports and arrest reports shall be open records. Notwithstanding any other  
31 provision of law other than the provisions of subsections 4, 5 and 6 of this section  
32 or section 320.083, investigative reports of all law enforcement agencies are closed  
33 records until the investigation becomes inactive. If any person is arrested and  
34 not charged with an offense against the law within thirty days of the person's

35 arrest, the arrest report shall thereafter be a closed record except that the  
36 disposition portion of the record may be accessed and except as provided in  
37 section 610.120.

38         3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any  
39 portion of a record or document of a law enforcement officer or agency, other than  
40 an arrest report, which would otherwise be open, contains information that is  
41 reasonably likely to pose a clear and present danger to the safety of any victim,  
42 witness, undercover officer, or other person; or jeopardize a criminal  
43 investigation, including records which would disclose the identity of a source  
44 wishing to remain confidential or a suspect not in custody; or which would  
45 disclose techniques, procedures or guidelines for law enforcement investigations  
46 or prosecutions, that portion of the record shall be closed and shall be redacted  
47 from any record made available pursuant to this chapter.

48         4. Any person, including a family member of such person within the first  
49 degree of consanguinity if such person is deceased or incompetent, attorney for  
50 a person, or insurer of a person involved in any incident or whose property is  
51 involved in an incident, may obtain any records closed pursuant to this section  
52 or section 610.150 for purposes of investigation of any civil claim or defense, as  
53 provided by this subsection. Any individual, his or her family member within the  
54 first degree of consanguinity if such individual is deceased or incompetent, his or  
55 her attorney or insurer, involved in an incident or whose property is involved in  
56 an incident, upon written request, may obtain a complete unaltered and unedited  
57 incident report concerning the incident, and may obtain access to other records  
58 closed by a law enforcement agency pursuant to this section. Within thirty days  
59 of such request, the agency shall provide the requested material or file a motion  
60 pursuant to this subsection with the circuit court having jurisdiction over the law  
61 enforcement agency stating that the safety of the victim, witness or other  
62 individual cannot be reasonably ensured, or that a criminal investigation is likely  
63 to be jeopardized. If, based on such motion, the court finds for the law  
64 enforcement agency, the court shall either order the record closed or order such  
65 portion of the record that should be closed to be redacted from any record made  
66 available pursuant to this subsection.

67         5. Any person may bring an action pursuant to this section in the circuit  
68 court having jurisdiction to authorize disclosure of the information contained in  
69 an investigative report of any law enforcement agency, which would otherwise be  
70 closed pursuant to this section. The court may order that all or part of the

71 information contained in an investigative report be released to the person  
72 bringing the action. In making the determination as to whether information  
73 contained in an investigative report shall be disclosed, the court shall consider  
74 whether the benefit to the person bringing the action or to the public outweighs  
75 any harm to the public, to the law enforcement agency or any of its officers, or to  
76 any person identified in the investigative report in regard to the need for law  
77 enforcement agencies to effectively investigate and prosecute criminal  
78 activity. The investigative report in question may be examined by the court in  
79 camera. The court [may] **shall** find that the party seeking disclosure of the  
80 investigative report shall [bear the] **have its** reasonable and necessary costs and  
81 attorneys' fees [of both parties, unless the court finds that the] **paid if it finds**  
82 **that the** decision of the law enforcement agency not to open the investigative  
83 report was substantially unjustified under all relevant circumstances[, and in  
84 that event, the court may assess such reasonable and necessary costs and  
85 attorneys' fees to the law enforcement agency].

86         6. Any person may apply pursuant to this subsection to the circuit court  
87 having jurisdiction for an order requiring a law enforcement agency to open  
88 incident reports and arrest reports being unlawfully closed pursuant to this  
89 section. If the court finds by a preponderance of the evidence that the law  
90 enforcement officer or agency has knowingly violated this section, the officer or  
91 agency shall be subject to a civil penalty in an amount up to one thousand  
92 dollars. If the court finds that there is a knowing violation of this section, the  
93 court may order payment by such officer or agency of all costs and attorneys' fees,  
94 as provided by section 610.027. If the court finds by a preponderance of the  
95 evidence that the law enforcement officer or agency has purposely violated this  
96 section, the officer or agency shall be subject to a civil penalty in an amount up  
97 to five thousand dollars and the court shall order payment by such officer or  
98 agency of all costs and attorney fees, as provided in section 610.027. The court  
99 shall determine the amount of the penalty by taking into account the size of the  
100 jurisdiction, the seriousness of the offense, and whether the law enforcement  
101 officer or agency has violated this section previously.

102         7. The victim of an offense as provided in chapter 566 may request that  
103 his or her identity be kept confidential until a charge relating to such incident is  
104 filed.

Section B. Because of the need to protect sensitive public records relating  
2 to public agency plans to prevent and respond to possible terrorist incidents and



3 to protect security system plans for certain critical public and private buildings  
4 and facilities, the repeal and reenactment of section 610.021 of this act is deemed  
5 necessary for the immediate preservation of the public health, welfare, peace and  
6 safety, and is hereby declared to be an emergency act within the meaning of the  
7 constitution, and the repeal and reenactment of section 610.021 of this act shall  
8 be in full force and effect upon its passage and approval.

✓

Unofficial

Bill

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